

SPECIAL CIVIL APPLICATION No 5571 of 1989

HON'BLE MR.JUSTICE H.K.RATHOD

GUJARAT STATE ROAD TRANSPORT CORPN

B S SINDHVAD

TRAFFRIX CONTROLLER

1. Special Civil Application No. 5571 of 1989
MR HARDIK C RAWAL for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

Date of decision: 16/01/2004

Heard learned advocate Mr. Hardik C. Raval for the petitioner. Notice of rule issued by this Court has

been served upon the respondent. Earlier, on behalf of the respondent, Vakalatnama was filed by the learned advocate Mr. M.H. Shaikh. Thereafter, in view of the demise of the learned advocate Mr. Shaikh, notice was again issued to the respondent which was served upon the respondent but nobody is appearing for the respondent. Today, when the matter was taken up for hearing, no appearance has been filed on behalf of the respondent and the respondent has also not appeared as a party in person before this Court. This being the matter of the year 1989, therefore, this court has examined the merits of the matter in absence of the respondent.

In this petition, the petitioner Corporation has challenged the award made by the Industrial Tribunal, Rajkot in Reference (IT) No. 141 of 1984 (Old No. 262/80) dated 17th March, 1989 wherein the tribunal has directed the petitioner to appoint the respondent workman as junior assistant with effect from 26.7.78 by considering the selection list Exh. 14 and to make payment of wages and other allowances by considering him to be on the post of Junior Assistant with effect from 26.7.78. The petitioner was also directed to pay the amount of difference of salaries and other allowances of the post of junior assistant with effect from 26.7.1978 within sixty days from the date of publication of the award.

Initially, while issuing rule, this court granted ad.interim relief in terms of para 8(B) of the petition on 3.8.1989 which was subsequently ordered to continue till further orders with clarification that in case if the petitioner loses in the petition, difference of the amount which may become payable to the respondent workman will be paid by the petitioner to the respondent workman within one month from the date of the decision. Affidavit in reply has been filed by the respondent.

The short question involved in this petition is that the respondent was initially appointed on the post of clerk in the year 1967. In the year 1973, the Corporation had taken departmental examination for the post of Junior Assistant wherein the respondent had appeared and he was declared to have passed the said examination and his name was included in the select list for the post of junior assistant. Meanwhile, in the year 1974, the Corporation also advertised the post of Traffic Controller wherein also the respondent had appeared and he was also selected for the post of Traffic Controller in direct recruitment. In view of the selection of the respondent for the post of traffic controller by way of

direct recruitment, he was appointed on the post of traffic controller on 21st August, 1974 which appointment was also accepted by the respondent. The grievance raised by the respondent before the tribunal was to the effect that though he was selected for the post of traffic controller in the process of direct recruitment, his right to remain in the select list for the post of junior assistant was still existing and he was entitled to continue in the post of junior assistant and that has been denied by the petitioner. The question was examined by the tribunal. The tribunal considered the only one aspect that when he was appointed on the post of traffic controller on 21st August, 1974, at that time, the respondent was not informed that now his name will be deleted from the list of junior assistant and for that, no opportunity was given by the petitioner to the respondent and that is how, the tribunal has examined the matter and has decided the matter in favour of the respondent.

The tribunal has lost sight of two relevant aspects which were important. In para 6, page 12 of the impugned award, the tribunal has considered the oral evidence of the respondent. In his chief examination, the respondent admitted that when he was appointed on the post of traffic controller, at that time, it was informed by the Corporation that now he will not get any promotion to the post of junior assistant. This admission made by the respondent in his examination in chief makes it clear that he was informed by the corporation that now he will not get any benefit of the selection in the post of junior assistant. This aspect has been further clarified by the respondent in his cross examination (page 13, internal page 8 of the award) that when he was appointed as traffic controller, at that time, he was informed by the corporation that now he will not get any promotion right for the post of junior assistant. This aspect has not only been admitted by the respondent in his cross examination but he also admitted that the moment he was appointed as traffic controller, his name was deleted from the select list of junior assistant. In spite of such oral evidence of the respondent workman himself, the tribunal ignored the same while coming to the conclusion that the respondent was not given any opportunity before deleting his name from the list of junior assistant. Such findings given by the tribunal are apparently baseless and perverse findings. The findings given by the tribunal at page 19 that without giving opportunity to the respondent, his right to get the post of junior assistant has been taken away by the petitioner, are baseless and perverse in nature in view of the admission

of the respondent in his chief examination as well as his cross examination. According to my opinion, this is the basic error committed by the tribunal which is sufficient for quashing and setting aside the impugned award made by the tribunal, while exercising the powers under Article 227 of the Constitution of India.

It is also not in dispute that the channel of promotion for both the posts is altogether different. Clerk is entitled for the post of Junior Assistant and the Traffic Controller is entitled for promotion to the post of ATI and then TI. Considering this fact, a traffic controller appointed by way of direct recruitment is entitled for promotion to the post of ATI and then TI and not for the post of Junior Assistant. Even this aspect has also not been taken into consideration by the tribunal. For the reasons recorded hereinabove, this petition is allowed. The award made by the Industrial Tribunal, Rajkot in Reference (IT) No. 141 of 1984 (Old No. 262/80) dated 17th March, 1989 is hereby quashed and set aside. Said reference is ordered to be dismissed. Rule is made absolute in terms indicated hereinabove with no order as to costs.

(H.K. Rathod, J.)

Vyas